No. 80-608

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UNITED STATES POSTAL SERVICE,

Appellant

v.

COUNCIL OF GREENBURGH CIVIC ASSOCIATIONS

AND

SAW MILL VALLEY CIVIC ASSOCIATION,

Appellees and Cross-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE NATIONAL ASSOCIATION OF LETTER CARRIERS AFL-CIO AS *AMICUS CURIAE*

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TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	i
INTEREST OF THE *AMICUS CURIAE*	1
SUMMARY OF ARGUMENT	2
ARGUMENT	
REGARDLESS OF THE OUTCOME HERE, THE COURT'S DECISION SHOULD BROADLY AFFIRM THE VALIDITY OF STATUTORY RESTRICTIONS ON PRIVATE DELIVERY OF MAIL TO PRESERVE THE POSTAL SERVICE'S REVENUE BASE	3
CONCLUSION	8

TABLE OF AUTHORITIES

Cases:

Associated Third Class Mail Users v. *United States Postal Service*, 600 F.2d 824 (D.C. Cir.), *aff'g* 440 F. Supp. 1211 (D.D.C. 1977), *cert. denied*, 444 U.S. 837 (1979)	4
In Re Debs, 158 U.S. 564 (1895)	7
Ex Parte Jackson, 96 U.S. 727 (1877)	4
Jones v. *North Carolina Prisoner's Union, Inc.*, 433 U.S. 119 (1977)	4
Rockville Reminder, Inc. v. *United States Postal Service*, 480 F.2d 4 (2d Cir. 1973)	4
Searight v. *Stokes*, 44 U.S. (3 How.) 150 (1845)	7
United States Postal Service v. *Black*, 569 F.2d 1111 (10th Cir.), *cert. denied*, 435 U.S. 944 (1978)	4
United States Postal Service v. *Brennan*, 574 F.2d 712 (2d Cir. 1978), *cert. denied*, 439 U.S. 1115 (1979)	4

PAGE

Statutes:

18 U.S.C. §1725 ..... 3, 4
18 U.S.C. §§1693-1697 4
39 U.S.C. §101(a) 5
39 U.S.C. §101(b) 5
39 U.S.C. §101(c) 2, 5
39 U.S.C. §§601-606 4
39 U.S.C. §2401(b)(1) and (2) 5
39 U.S.C. §3623(d) 5

Legislative History:

H.R. REP. No. 709, 73d Cong., 2d Sess. (1934) 3

H.R. REP. No. 1004, 91st Cong., 2d Sess. 10 (1970) 5

75 Cong. Rec. 5575-5577 (1932) 3

Miscellaneous:

Alexander, *The Postal Service Would Like to Be the Electronic Mailman, Too*, Fortune, June 18, 1979 6

BOARD OF GOVERNORS OF THE UNITED STATES POSTAL SERVICE, 93D. CONG., 1ST SESS., STATUTES RESTRICTING PRIVATE CARRIAGE OF MAIL AND THEIR ADMINISTRATION (Comm. Print No. 93-5, June 24, 1973) 4, 5

COMMISSION ON POSTAL SERVICE, REPORT (1977) 5, 6, 7

Craig and Alvis, *The Postal Monopoly: Two Hundred Years of Covering Commercial As Well As Personal Messages*, 12 U.S.F. L. REV. 57 (1977) 5

Experiments in Electronic Mail, National Journal, November 3, 1979 6

Geller and Brotman, *Electronic Alternatives to Postal Service in* COMMUNICATIONS FOR TOMORROW (Glen O. Robinson, ed. 1978) 6

PAGE

GENERAL ACCOUNTING OFFICE, IMPLICATIONS OF ELECTRONIC MAIL FOR THE POSTAL SERVICE'S WORK FORCE, (Feb. 6, 1981) 6

NATIONAL RESEARCH COUNCIL, ELECTRONIC MESSAGE SYSTEMS FOR THE U.S. POSTAL SERVICE (1976) 6

OFFICE OF TELECOMMUNICATIONS POLICY, U.S. DEPT. OF COMMERCE, THE POSTAL CRISIS: THE POSTAL FUNCTIONS AS A COMMUNICATIONS SERVICE (1977) 6

Wiley and Adams, *Should FCC or USPS Control Electronic Mail?*, Legal Times, Sept. 16, 1979 6

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INTEREST OF THE *AMICUS CURIAE*

The National Association of Letter Carriers, AFL-CIO ("NALC") respectfully submits this brief pursuant to Rule 36(2) of this Court, upon consent of all parties, in support of the position of appellant United States Postal Service.

NALC is the certified exclusive collective bargaining representative of the more than 180,000 active city letter carriers who are employed by the U.S. Postal Service nationwide. These letter carriers depend for their livelihood upon the continued economic vitality of the Postal Service. Letter carriers likewise depend

upon the Postal Service's statutory responsibility to ". . . place particular emphasis upon opportunities for career advancements of all officers and employees and the achievement of worthwhile and satisfying careers in the service of the United States."[1] Thus, any erosion of the Postal Service's revenue base—and/or any reduction in the volume of mail carried by the Postal Service—necessarily threatens economic harm to letter carriers.

NALC believes that the decision below, read broadly, tends to undermine the integrity of those laws upon which the Postal Service depends for the maintenance of its mail volume and revenues. Accordingly, NALC has a substantial interest in the outcome of this case.

Our aim is to assist the Court in understanding the overall context in which this case arises by discussing certain considerations not raised below. Most significant is the revolution in electronic telecommunications technology presently confronting the Postal Service which threatens dramatic reductions in the demand for conventional mail service by business institutions and banks. These technological developments and other factors have put the Postal Service in a position where it can ill afford any erosion of its traditional revenue base. For this reason alone, the decision below should be reversed or, at the very least, substantially narrowed.

SUMMARY OF ARGUMENT

1. The decision below rests on two conclusions: (1) that imposition of postage charges, by itself, constitutes an infringement upon First Amendment speech rights; and (2) that the Postal Service's interest in protecting the integrity of its revenue base is insufficient to justify any incidential infringement of appellees' ability to communicate caused by the postage requirement. Both conclusions are erroneous.

2. Statutory restrictions on private delivery of mail have been imposed by Congress since the founding of the Republic.

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[1] Postal Reorganization Act, 39 U.S.C. §101(c).

Continued enforcement of such restrictions is essential to preserve the Postal Service's revenue base. This is especially true in the 1980's because a burgeoning revolution in telecommunications technology threatens drastic reductions in the demand for conventional postal services.

3. The demise—or substantial impairment—of traditional universal postal services would have constitutional ramifications. The integrity of the Postal Service's revenue base is a matter of great social concern.

ARGUMENT

Regardless of the Outcome Here, the Court's Decision Should Broadly Affirm the Validity of Statutory Restrictions on Private Delivery of Mail to Preserve the Postal Service's Revenue Base.

1. The statute at issue in this case, 18 U.S.C. §1725, obviously does not purport to prohibit the appellee civic associations from engaging in door-to-door distribution of their materials. The statute merely requires that postage be paid as a condition of access to Postal Service approved letter boxes. To hold that enforcement of Section 1725 violates appellees' rights under the First Amendment, the court below was required to accept the validity of two propositions: (1) that imposition of postage charges, by itself, constitutes an infringement upon First Amendment speech rights; and (2) that the Postal Service's interest in protecting the integrity of its revenue base is insufficient to justify any incidental infringement of appellees' ability to communicate caused by the postage requirement.[2]

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[2] Section 1725 was enacted in 1934 to stem the loss of a substantial amount of postal revenues caused by the practice of many companies of using messengers to deposit statements of account and other circulars in letter boxes without payment of postage. *See*, H.R. REP. No. 709, 73d Cong., 2d Sess. (1934); 75 Cong. Rec. 5575-5577 (1932) [House debates on predecessor bill that was not enacted].

While NALC believes that both propositions are erroneous,[3] it is the second principle which we find cause for special concern. As discussed below, Postal Service revenues depend on the continued enforcement of a group of federal laws, known as the Private Express Statutes, restricting private delivery of mail.[4] Regardless of the outcome here, the validity of those laws—and the legitimacy of the Government's interest in protecting postal revenes—should be broadly affirmed.[5]

2. Generally, throughout the world, postal systems operate under government monopolies.[6] The United States has been no exception. Statutory restrictions on private delivery of mail have been imposed by Congress since the founding of the Republic.[7]

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[3] The Court has already held that the marginal cost of postage is not in itself an infringement of free speech. Jones v. North Carolina Prisoner's Union, Inc., 433 U.S. 119, 130-131 (1977). *See also*, Rockville Reminder, Inc. v. United States Postal Service, 480 F.2d 4 (2d Cir. 1973); Associated Third Class Mail Users v. United States Postal Service, 600 F.2d 824 (D.C.Cir.), *aff'g* 440 F.Supp. 1211, 1216 (D.D.C. 1977), *cert. denied*, 444 U.S. 837 (1979). *Cf.* Ex Parte Jackson, 96 U.S. 727, 732 (1877); United States Postal Service v. Brennan, 574 F.2d 712, 715 (2d Cir. 1978), *cert. denied*, 439 U.S. 1115 (1979); United States v. Black, 569 F.2d 1111 (10th Cir.), *cert. denied*, 435 U.S. 944 (1978)(affirming constitutionality of Private Express Statutes).

[4] The Private Express Statutes are presently codified at 39 U.S.C. §§601-606 and 18 U.S.C. §§1693-1697.

[5] The prohibitions set forth in the Private Express Statutes go no further than those imposed by §1725. The Statutes permit delivery of mail, provided only that proper postage be paid. *See*, 39 U.S.C. §601. Thus it would seem that the rationale of the decision below could lay the ground work for future constitutional challenges to the validity of the Private Express Statutes.

[6] *See* BOARD OF GOVERNORS OF THE UNITED STATES POSTAL SERVICE, 93d CONG. 1ST SESS., STATUTES RESTRICTING PRIVATE CARRIAGE OF MAIL AND THEIR ADMINISTRATION, A REPORT TO THE PRESIDENT AND THE CONGRESS, HOUSE COMM. ON POST OFFICE AND CIVIL SERVICE, Comm. Print No. 93-5 (June 24, 1973) App. D [hereinafter cited as BOARD OF GOVERNORS REPORT] (finding postal monopolies operative in Canada, Denmark, France, Great Britain, India, Israel, Japan, Republic of South Africa, and West Germany).

[7] The first comprehensive Postal Ordinance, enacted in 1782 by the Continental Congress under the Articles of Confederation, generally prohibited private carriage of "letters, packets, and other dispatches." This postal monopoly was extended after the Constitution took effect in 1789 and reestablished in the first comprehensive postal act adopted by the new Congress in 1792. Amendments to these laws in 1825, 1827 and 1845 placed the Private Express Statutes in the form in which they remain today. BOARD OF GOVERNORS REPORT, *supra* note 6, at 57-59.

The rationale for these laws emerges from the Postal Service's historic mandate to provide universal mail service at uniform rates.[8] By restricting private mail delivery, the statutes guarantee to the Postal Service the mail volume and consequent revenues needed to provide service to all parts of the nation including those areas (e.g., rural areas and small towns) which, at uniform rates, cannot be served at a profit.[9]

The need to maintain restrictions on private delivery in the 1980's is more urgent than ever. In recent reports, both the Board of Governors of the Postal Service and the Commission on Postal Service strongly advised against any relaxation of the traditional restrictions on private delivery of mail.[10] These recommendations are based on several factors. First, Congress has directed the Postal Service through the Postal Reorganization Act to achieve greater self-sufficiency.[11] In anticipation of this development, the Act provided for a scheduled reduction in federal appropriations to the Postal Service.[12] Additional cuts in the postal subsidy can be expected as part of the effort to reduce inflation in the national economy. Thus, the Postal Service is more than ever dependent on its self-generated revenues.

Second, recent studies have confirmed that a substantial portion of first class mail volume is vulnerable to diversion to private carriers, and that private carrier service can be launched with relatively modest venture capital.[13] An erosion of current legal restrictions would permit private carriers to skim off the Postal Service's most profitable business, resulting in a sharp reduction in Postal Service volume and revenue and an inevitable decline in service to thinly populated and low income areas.[14]

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[8] *See* 39 U.S.C. §§101(a), 101(b) and 3623(d).

[9] *See* Craig and Alvis, *The Postal Monopoly: Two Hundred Years of Covering Commercial as Well as Personal Messages*, 12 U.S.F. L. REV. 57, 59-62 (1977).

[10] BOARD OF GOVERNORS REPORT, *supra* note 6, at 9-10; COMMISSION ON POSTAL SERVICE, REPORT, 72 (1977).

[11] *See* H.R. REP. No. 1004, 91st Cong., 2d Sess. 10 (1970).

[12] *See* 39 U.S.C. §§2401(b)(1) and (2).

[13] BOARD OF GOVERNORS REPORT, *supra* note 6, at 119-120.

[14] *Id.* at 9-10

But beyond these traditional considerations is the single most significant threat to the continued survival of the Postal Service: the burgeoning revolution in telecommunications technology. Various electronic communications systems are now available which may render obsolete many traditional postal services, particularly in the areas of business communications and banking.[15] Widespread commercial acceptance of these various new technologies may cause dramatic reductions in the demand for conventional mail service during the next two decades. For example, a recent General Accounting Office report, synthesizing the results of four studies published between 1977-1980, projects a diversion to electronic communications systems of 28.3 billion pieces of mail by the year 2000.[16] This represents almost half of the total first class mail volume handled by the Postal Service during fiscal year 1980.

Such reductions of first class mail volume would substantially undercut the ability of the Postal Service to continue its traditional services. With the major costs of the Postal Service fixed, and volume—and thus revenue—declining markedly, productivity would fall per message and costs skyrocket. The public would then be compelled to expend an inordinate sum on both postage and subsidies to maintain a national system of communications for those messages either not technologically susceptible to

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[15] For descriptions and analysis of electronic communications systems, *see* Geller and Brotman, *Electronic Alternatives to Postal Service*, in COMMUNICATIONS FOR TOMORROW, (Glen O. Robinson, ed. 1978) [hereinafter Geller & Brotman]; Wiley and Adams, *Should FCC or USPS Control Electronic Mail?*, Legal Times, Sept. 16, 1979; Alexander, *The Postal Service Would Like to be the Electronic Mailman, Too*, Fortune, June 18, 1979; OFFICE OF TELECOMMUNICATIONS POLICY, U.S. DEP'T OF COMMERCE, THE POSTAL CRISIS: THE POSTAL FUNCTION AS A COMMUNICATIONS SERVICE (1977); *Experiments in Electronic Mail*, National Journal, November 3, 1979; NATIONAL RESEARCH COUNCIL, ELECTRONIC MESSAGE SYSTEMS FOR THE U.S. POSTAL SERVICE (1976).

[16] GENERAL ACCOUNTING OFFICE, IMPLICATIONS OF ELECTRONIC MAIL FOR THE POSTAL SERVICE'S WORK FORCE, 22-3 (Feb. 6, 1981). *See also*, NATIONAL RESEARCH COUNCIL, ELECTRONIC MESSAGE SYSTEMS FOR THE USPS (1976) (finding that-one third of all mail, including one-half of profitable first class mail, is susceptible to electronic transmissions); COMMISSION ON POSTAL SERVICE, REPORT, *supra*, note 10, at 574 (projecting a 23% reduction in first class mail volume due to electronic systems diversion by 1985); and Geller and Brotman, *supra*, note 15, at 326.

electronic transmission or which are—from the preception of private enterprise—unprofitable.[17]

Based on the foregoing factors, the Commission on Postal Service has concluded that electronic communications constitute a major threat to the survival of the Postal Service:

> *We conclude that impact* [of electronic communications] *will be of sufficient magnitude to constitute a major threat to the basic business of the Postal Service. Procrastination by the Postal Service to a time when a significant volume has been diverted and the magnitude of the impact can be verified will be too late for the Postal Service to take positive action.*[18]

3. The demise—or substantial impairment—of traditional universal postal services would have obvious constitutional ramifications. It would represent in itself an abandonment of a constitutionally based, judicially recognized, sovereign, federal duty.[19] Moreover, there is certainly no reason to expect that computerized telecommunications equipment will be readily available to low income households or in thinly populated rural areas. The absence of traditional postal services would leave segments of the American people without access to a low-cost paper-copy communications service and thus inhibit the free flow of information as guaranteed by the First Amendment.

NALC readily acknowledges that the injunction granted to the appellee civic associations will not, by itself, precipitate the demise of the Postal Service. Our point is that the integrity of the Postal Service's revenue base is a matter of great social concern. Accordingly, the Court's decision in this case should broadly affirm the validity of the statutory restrictions on private mail delivery upon which postal revenues depend.

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[17] *See* COMMISSION ON POSTAL SERVICE, REPORT, *supra*, note 10, at 544-5, for projections of the impact of electronic diversions on postal rates.

[18] *Id.* at 23 (emphasis in original).

[19] *See* In Re Debs, 158 U.S. 564 (1895); Searight v. Stokes, 44 U.S. (3 How.) 150, 169 (1845).

CONCLUSION

The decision of the district court should be reversed.

Respectfully submitted,

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